

SUPREME COURT OF WISCONSIN

CASE No.: 03-0421

COMPLETE TITLE:

Dairyland Greyhound Park, Inc.,
Plaintiff-Appellant,

v.

James E. Doyle, in his official capacity
as Governor of the State of Wisconsin, and
Marc J. Marotta, in his official
capacity as Secretary of the Wisconsin
Department of Administration,
Defendants-Respondents.

ON CERTIFICATION FROM THE COURT OF APPEALS

OPINION FILED: March 30, 2004

SUBMITTED ON BRIEFS:

ORAL ARGUMENT: January 27, 2004

SOURCE OF APPEAL:

COURT: Circuit

COUNTY: Dane

JUDGE: Richard J. Callaway

JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING: WILCOX, J., did not participate.

ATTORNEYS:

For the plaintiff-appellant there were briefs by *Ronald R. Ragatz*, *Peter A. Peshek*, *Mindy Rowland Buenger* and *DeWitt, Ross & Stevens, S.C.*, Madison, and oral argument by *Ronald R. Ragatz*.

For the defendants-respondents the cause was argued by *John S. Greene*, *Maura FJ Whelan*, *Charles D. Hoornstra*, *Thomas C. Bellavia*, assistant attorneys general, with whom on the brief was *Peggy A. Lautenschlager*, attorney general.

An amicus curiae brief was filed by *Douglas B.L. Endreson*, *William R. Perry* and *Sonosky, Chambers, Sachse, Endreson & Perry, LLP*, Washington, D.C.; *Howard Bichler*, Hertel; *Carol*

Brown and Brown & LaCounte, LLP, Madison; Jennifer L. Nutt Carleton and Oneida Law Office, Oneida; Douglas William Huck, Bowler; Rebecca R. Weise, Black River Falls; Kevin L. Osterbauer, Odanah; Larry Leventhal and Larry Leventhal & Associates, Minneapolis, MN; Kris M. Goodwill and Lac Courte Oreilles Legal Department, Hayward; Jeffrey A. Crawford, Milwaukee; Eric N. Dahlstrom and Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Frye, LLP, Tempe, AZ; David M. Ujke, Bayfield, on behalf of the St. Croix Chippewa Indians of Wisconsin, Lac du Flambeau Band of Lake Superior Chippewa Indians, Oneida Tribe of Indians of Wisconsin, Forest County Potawatomi Community of Wisconsin, Ho-Chunk Nation, Stockbridge-Munsee Community, Bad River Band of the Lake Superior Tribe of Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and Red Cliff Band of Lake Superior Chippewa Indians, and oral argument by Douglas B.L. Endreson.

An amicus brief was filed by *Brady C. Williamson, James A. Friedman and LaFollette, Godfrey & Kahn*, Madison, on behalf of Teamsters Local Union No. 344, Teamsters Local Union No. 200, Milwaukee Building & Construction Trades Council, Professional Firefighters of Wisconsin, Inc., COA Youth and Family Centers, Hispanic Chamber of Commerce, St. Ann Center for Intergenerational Care, Inc., Lutheran Special School, AIDS Resource Center of Wisconsin, Inc., Milwaukee Urban League, and Legal Aid Society of Milwaukee.

An amicus curiae brief was filed by *Raymond P. Taffora, Roisin H. Bell, Brian J. Rybarik and Michael Best & Friedrich, LLP*, Madison, on behalf of Metropolitan Milwaukee Association of Commerce and Associated General Contractors-Greater Milwaukee.

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NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 03-0421
(L.C. No. 01 CV 2906)

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FILED

MAR 30, 2004

Cornelia G. Clark
Clerk of Supreme Court

Appeal from Circuit Court, Dane County, Richard J. Callaway, Judge. *Certification vacated. Cause remanded to the court of appeals.*

¶1 PER CURIAM. This case comes before the court on certification from the Wisconsin Court of Appeals District IV.

¶2 The court is equally divided on whether to affirm the judgment of the circuit court. Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, and Justice N. Patrick Crooks would affirm. Justice David T. Prosser, Jr., Justice Diane S. Sykes, and Justice Patience D. Roggensack would reverse. Justice Jon P. Wilcox did not participate.

¶3 When a certification or bypass results in a tie vote by this court, the better course of action is to vacate our decision to accept certification or bypass and remand the cause to the court of appeals. State v. Richard Knutson, Inc., 191 Wis. 2d 395, 396-97, 528 N.W.2d 430 (1995) (remanding to court of appeals on a tie vote on certification); State v. Elam, 195 Wis. 2d 683, 684-85, 538 N.W.2d 249 (1995) (restating rule but declining to remand to court of appeals on a tie vote on bypass because court of appeals had previously decided issue).

¶4 Accordingly, we vacate our order granting certification and remand to the court of appeals.

By the Court.—The Order granting certification is vacated and the cause is remanded to the court of appeals.

